NATIONAL PORT AUTHORITY (NPA), by and thru its Managing Director, MOSES P. HARRIS, JR., Appellant, v. **BEATRICE DOUPU** and **THE BOARD OF GENERAL APPEALS,** Ministry of Labour, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: December 2, 1987. Decided: February 25,1988.

1. The National Labour Court, in the conduct of cases before it, is guided by the rules of the Debt Court, and its findings of facts and conclusions of law shall be in accordance with the provisions of chapter 23 of the Civil procedure Law.

2. The National Labour Court has the authority, as to any judgment brought before it on appeal, to reverse, affirm, or modify, in whole or in part, said judgment as to any party, when the interest of justice so requires, or to remand a case to the hearing officer or labour commissioner for further proceedings, with such instructions as may be necessary and proper.

3. Where wrongful dismissal is alleged, the National Labour Court has the power to order reinstatement of the dismissed employee, but may order payment of reasonable compensation to the aggrieved employee in lieu or reinstatement.

4. An employer against who an order has been made regarding the dismissal of an employee has the right of election to reinstate the dismissed employee or pay such compensation as determined by the Labour Court, in accordance with the Labor Practices Law.

5. In assessing the amount of compensation to be paid an employee who has been wrongfully dismissed, the Labour Court shall have regard to the reasonable expectations of the employee in the case of a contract for an in definite duration, and to the employee's length of service; provided that the award shall not be more than the aggregate of more than two years salary or wages of the employee, computed on the basis of the average rate of salary received six months immediately preceding the dismissal; and provided further that if there is reasonable ground to believe that the dismissal is to avoid the payment of pension, than the award shall be up to but not in excess of the aggregate of five years salary or wages computed on the basis of the average salary or wages received six months immediately preceding the dismissal.

6. Pleading is the giving of notice of what a party intends to prove at the trial.

7. The best evidence which a case admits must always be produced.

8. Only such points of law as are expressly raised shall be considered in determining an appeal.

9. A party who alleges that a decision of a court or board is inconsistent, contradictory, arbitrary, and not supported by the evidence adduced by the parties, must show the inconsistency and contradiction of the decision, or the extent thereof so as to put the adversary on notice and provide them an opportunity to respond thereto.

10. A group or groups of employees shall be dismissed only an for act committed by such group or groups. Accordingly, it shall be unlawful for an employer to dismiss a group or groups of employees for an act the commission of which cannot be attributed to a definite individual. Labour Practices Law, Lib. Code 18-A: 71.

The appellant, National Port Authority (NPA) appealed to the Board of General Appeals from a decision of the hearing officer finding its dismissal of the appellee to be illegal and holding that the appellant reinstate the appellee or be held liable to the appellee in the amount of $5,100.00, representing one month's pay for each year of service, ten months as severance pay and other benefits due the appellee as compensation for the illegal dismissal. In dismissing the appellee, the appellant had charged her with "gross negligence" in the performance of her duty, stating that as a result of the appellee under-billing of some of its consignees, it had suffered losses. The hearing officer had found the dismissal to be without merits.

On appeal to the Board of General Appeals, the Board affirmed the decision of the hearing, but with the modification that the award be reduced to $4,675.00, representing one month's pay for each year of service and one month for the actual time served. Form this ruling, a further appeal was taken to the National Labour Court. After hearing arguments on the petition and resistance, the National Labour Court affirmed the ruling of the Board but with the modification that the award to the appellant be increased to $10,200.00, representing two year's salary, computed on the basis of the last month's salary preceding the dismissal. A further appeal was then taken to the Supreme Court.

In its appeal to the Supreme Court, the appellant challenged the authority of the National Labour Court to modify the award of the Board of General Appeals as well as the decision finding the appellant liable.

The Supreme Court disagreed, holding that the trial court was correct in its decision. The Supreme Court noted that under chapter 23 of the Judiciary Law which created the National Labour Court, that Court is vested with the authority to affirm, reverse, or modify any decision brought to it on appeal, or to remand the same for further proceedings by the hearing officer at the Ministry of Labour, in the interest of justice. The Court held that the National Labour Court acted within the authority granted by that statute in modifying the award of the Board of General Appeals. The Court observed that the Labour Laws relative to the dismissal of an employee, vest in the appropriate agency or judicial forum the right, where the dismissal of the employee is determined to be wrongful or illegal, to award compensation of up to two years, computed on the basis of the salary of the last six months preceding the dismissal of the employee. The Court concluded, therefore, that the trial court did not err in modifying the Board's decision and increasing the award to two years' salary.

As to the acts committed by the appellee and which were used by the appellant as the basis for her dismissal, the Court characterized the same as mistakes which were insufficient to warrant the dismissal of the appellee, especially in the face of a lack of any rebuttal by the appellant to show that the appellee's acts were other than mistakes. The Court observed that by the testimony of the appellant's own witness, the initial losses which the appellant had suffered as a result of the mistakes of the appellee, were recovered by the appellant from its consignees who had been under-billed. Therefore, the Court said that the appellant had suffered no losses, and hence could not be used by the appellant as the basis for the dismissal of the appellee accordingly, the Court *affirmed* the judgment of the trial court.

James D. Gordon appeared for appellant. *J. Henrique Smith* appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

The records in this case show that on August 5, 1985, Beatrice Duopu, the co-appellee herein, filed a complaint with the Ministry of Labour against the management of the National Port Authority alleging that she had been summarily dismissed by the management for what the management termed "gross negligence" in the performance of her duties. Upon receiving the complaint, the management was cited by the hearing officer who thereafter conducted a hearing with both parties present and represented by counsels. After hearing the arguments *pro et con,* the hearing officer ruled that the co-appellee's dismissal by the NPA management was illegal. The hearing officer then ordered the management to re-instate the appellee, or

pay him in lieu thereof the aggregate sum of $5,100.00, representing one month pay for each year of service, ten months as severance pay, and other benefits due her by management as compensation for illegal dismissal. Management excepted to the ruling of the hearing officer and appealed to the Board of General Appeals.

The Board of General Appeals, after reviewing the evidence, affirmed the ruling of the hearing officer with the modification that management pay appellee the aggregate sum of $4,675.00, representing one month pay for the time served and ten months salary at the rate of one month salary for each year of service rendered by the appellee. Management again excepted to the decision of the Board of General Appeals and appealed to the National Labour Court, Montserrado County, on a two-count petition for a judicial review of the case. We hereunder quote the petition for the benefit of this opinion:

"PETITIONER'S PETITION

Petitioner in the above entitled cause petitions this Honourable Court and showeth the following reasons, to wit:

1. That the decision of the Board of General Appeals of the Ministry of Labour, delivered June 2, 1986 in the above entitled cause is arbitrary and unsupported by the evidence adduced by both parties because the ruling of the Ministry of Labour is inconsistent and contradictory. Petitioner therefore prays that same should be reversed and the dismissal taken against Beatrice Duopu be sustained with costs against the Respondents.

2. And also because petitioner says that the award of the Board of General Appeals should be set aside as same is not supported by the evidence adduced by the parties before the Ministry of Labour.

Wherefore, in view of the foregoing, the petitioner most respectfully prays this Honourable Court to reverse the decision of the Board of General Appeals and to grant unto petitioner any and further relief as the nature of this petition demands."

The respondents, after being summoned by the National Labour Court, filed returns which read as follows:

"RESPONDENTS' RETURNS

Respondents in the above entitled cause of action, responding to the petition of the petitioner herein deny the legal sufficiency of said petition to recover in these

proceedings, and for reasons showeth the following, to wit:

1. Because respondents say and contend that the said petition is fatally defective, in that count one thereof refers to the decision of the Board of General Appeals of the Ministry of Labour as being 'arbitrary and unsupported by evidence adduced by the parties', without making profert of a copy of said decision to give respondents that sufficient notice required by law; hence, said count one should be dismissed and respondents so pray.

2. And also because further to count one of said petition, it avers therein that the decision is 'inconsistent and contradictory', without pointing out what part is inconsistent to the other, what is contradictory; this leaves said count one doubtful, vague and uncertain and therefore makes it a fit subject for dismissal and respondents so pray.

3. And also because respondents say and aver that the award granted by the Board of General Appeals is in harmony with the evidence adduced by the parties at the trial as the records disclose and should not be disturbed by this Honourable Court.

Wherefore, in view of the foregoing, respondents pray this Honourable Court to dismiss the purported petition of the petitioner and uphold the decision of the Board of General Appeals, Ministry of Labour, in its entirety, and rule said petitioner to all costs in these proceedings, and to grant unto respondents any and all further rights and benefits which unto Your Honour seemeth lawful and just."

Thereafter, the court assigned the petition for hearing. Arguments *pro et con* on said petition were entertained by the court and the relevant law citations made by the parties in support of their respective contentions. The court, having duly noted the said citations on the minutes, proceeded on the 2" d day of June, A. D. 1986, to enter a judgment in favour of appellee, and to deny the petition. In denying the petition, the court confirmed and affirmed the decision of the Board of General Appeals, but with the modification that the award be increased to $10,200.00. Whereupon, the management excepted to the final judgment and announced an appeal therefrom. The appellant having perfected its appeal within the statutorily prescribed period, the case is now before us for our consideration and final determination.

In pursuance of the appeal announced from the trial court's judgment, the appellant filed a four-count bill of exceptions, which we hereunder quote verbatim:

"Petitioner in the above entitled cause, not being satisfied with Your Honour's ruling of August 15, 1986 and having excepted to and appealed from said ruling in open court, now tenders this bill of exceptions for Your Honour's kind approval.

1. That the power to award compensation to an employee who is alleged to have been wrongfully dismissed is delegated by law to the Board of General Appeals. Your Honour therefore committed a reversible error by modifying the award of the Board of General Appeals from 10 months in the sum of $4,250.00 to 24 months in the sum of $10,200.00.

2. And also because as to the entire ruling of Your Honour, petitioner submits that Your Honour's failure to pass upon the salient issues of law and facts raised in counts 1 and 2 of its petition is a reversible error. It is mandatory that you review the records of the case and your failure to do so is a reversible error.

3. And also because in your ruling of August 15, 1986, you ruled that petitioner was wrong for not dismissing the supervisor and assistant supervisor under whom co-respondent Beatrice Duopu worked, since both the supervisor and assistant supervisor counter-checked the bill. Your Honour erroneously reached this conclusion because it was never raised by corespondent Beatrice Duopu. The actual fact is and the contention of the petitioner is that co-respondent Duopu failed, neglected and refused to show the bill in question to her supervisor for checking and approval because she under-billed the consignee for reasons known to her. This salient issue of fact, even though clearly visible on the records, Your Honour failed to pass upon same.

4. And also because Your Honour committed a reversible error when you ruled that petitioner did not incur losses by the act of co-respondent Duopu in under-billing the consignee. Petitioner contended on record that the consignee was under-billed and that petitioner only discovered this gross negligent act of co-respondent Duopu during the internal audit by the petitioner's agent of the records of the billing section. By then petitioner had suffered monetary losses which were due to the gross negligent act of co-respondent Duopu. Your Honour's ruling is therefore erroneous on this point.

Wherefore, and in view of the foregoing, petitioner respectfully prays Your Honour's approval of this bill of exceptions to enable the Honourable the Supreme Court of Liberia to review the entire records of the case."

Regarding count one of the bill of exceptions, the appellant's basic contention is that the judge of the National Labour Court committed a reversible error in modifying the award of the Board of General Appeals from ten months, in the sum of $4,250.00, to twenty-four months, in the sum of $10,200.00.

The issue presented therefore is whether or not the National Labour Court is clothed with authority to modify the ruling of the Board of General Appeals of the Ministry of Labour.

The Act of the National Legislature relative to the establishment of the National Labour Court, approved October 20, 1986, provides at section 23.4, under the caption *Procedure on Review,* reads:

"In the conduct of all cases brought before it, the Labour Court shall be guided by the rules of the debt courts and shall make a finding of facts and conclusion of law thereon in accordance with provisions of chapter 23 of the Civil Procedure Law of Liberia, and may reverse, affirm or modify, wholly or in part, any judgment before it, as to any party, and when the interest of justice so requires, remand a case to the hearing officer or labour commissioner for further proceedings, with such instructions or orders as may be necessary and proper."

Under the statute quoted *supra,* the National Labour Court is authorized to affirm, modify or reverse, in whole or in part, any judgment before it as to any party; and when the interest of justice so requires, to remand a case to the hearing officer or labour commissioner for further proceedings, with such instructions or orders as may be necessary and proper.

For the benefit of this opinion, we hereunder quote the relevant portion of the complainants statement made on September 2, 1985, on sheet one of the minutes:

"...when the comptroller called us, she brought these bills and said that the managing director sent these bills to her to investigate that we under-billed the consignees. Being the storage biller, I told the comptroller that I am the one who billed these bills but it was a mistake. All carried the same quantity. So I just took one measurement, maybe because all carried one item so then my boss-man, Maxwell Kun re-billed the under-bills and sent them to the cashier because the comptroller said we should check if they are under-billed. So then we came back to our office and he (boss-man) sent these particular bills to the cashier. It was on Monday when she called us and on Friday, she prepared my dismissal letter and signed it on the

18th of July, 1985. I received it on July 25, 1985."

MISTAKE is defined as "some unintentional omission or error arising from ignorance, surprise, imposition or misplaced confidence. A mistake exists when a person under some erroneous conviction of law or fact, does, or omits to do, some acts which, but for the erroneous conviction, he would not have done or omitted. It may arise either from unconsciousness, ignorance, forgetfulness, imposition or misplaced confidence."

"Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

(1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or

(2) belief in the present existence of a thing material to the contract which does not exist or in the past existence of such thing which has not existed." BLACK'S LAW DICTIONARY 1152-1153.

In addition, section 2, chapter one, of the Labour Law of Liberia, relative to WRONGFUL DISMISSAL, reads *"Wrongful Dismissal:* Where wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to:

(a)(i) reasonable expectations in the cause of dismissal in a contract of indefinite duration;

(ii) length of service, but in no case shall the amount awarded be more than the aggregate of two years' salary or wages of the employee, computed on the basis of the average rate of salary received six months immediately preceding the dismissal; however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding the aggregate of five years' salary or wages computed on the basis of the average rate of salary received six months immediately preceding dismissal." Labor Practices Law, Lib. Code 18-A:9.

According to section 9 of the Labour Law, quoted above, when wrongful dismissal is alleged, "in no case shall the amount awarded be more than the aggregate of two years' salary or wages of the employee, computed on the basis of the average rate of salary received six months immediately preceding the dismissal; however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding five years salary or wages computed on the basis of the average rate of salary received six months immediately preceding the dismissal." *Ibid.*

Under these circumstances, the contention of the appellant that the National Labour Court committed a reversible error in modifying the award of the Board of General Appeals is not supported by the records. Therefore, count one of the bill of exceptions is not sustained.

In count two of the bill of exceptions, the appellant contended that the Labour Court Judge committed a reversible error by failing to pass upon the salient issues of law .and facts raised in counts one and two of its petition for judicial review. Counts one and two of the petition read:

"1. That the decision of the Board of General Appeals of the Ministry of Labour, delivered June 2, 1986 in the above entitled cause is arbitrary and unsupported by the evidence adduced by both parties because the ruling of the Ministry of Labour is inconsistent and contradictory. Petitioner therefore pays that same should be reversed and the dismissal taken against Beatrice Duopu be sustained with cost against the respondents.

2. And also because petitioner says that the award of the Board of General Appeals should be set aside as same is not supported by the evidence adduced by the parties before the Ministry of Labour."

The contention of the appellant contained in counts one and two herein above of the petition for judicial review, filed before the National Labour Court, is that the decision of the Board of General Appeals as delivered on the 2nd day of June1986, is arbitrary, inconsistent, contradictory and unsupported by the evidence adduced by the parties at the Ministry of Labour, and that therefore, the said decision should be reversed.

The records taken at the investigation conducted by the hearing officer as well as the decision of the Board of General Appeals are self-explanatory. We observe therefrom

that both the complainant and the defendant produced evidence at the investigation conducted by the hearing officer, in support oftheir respective contentions. The appellant claims that the decision of the Board of General Appeals is arbitrary, inconsistent and contradictory, but it does not state what evidence was introduced by it before the hearing officer or the Board of General Appeals which was not reflected in the decision of the Board as would render the said decision inconsistent and contradictory. Moreover, there is no showing by appellant as to the omission, if any, by the Board of General Appeals of any evidence introduced by appellant which would render the said decision of the Board arbitrary. "It is an elementary principle of our practice, and is found in our statutes, that the fundamental principle of all pleading is the giving of notice of what a party intends to prove at the trial; and that the best evidence which a case admits of, must always be produced." *Shaheen v. Compagnie Francaise de L 'Afrique Occidentale,* 13 LLR 278, 290 (1958). "Only such points of law as are expressly raised by an appellant shall be considered in determining an appeal." *Paterson, Zochonis & Co., Ltd. v. Cooper,13* LLR 348 (1959).

The appellant, having alleged that the decision of the Board of General Appeals was inconsistent, contradictory, arbitrary and not supported by the evidence adduced by the parties, it was required, under the rules of our practice and procedure extant, to show the inconsistency and contradiction of the decision of the Board, or the extent thereof, so as to enable its adversary to know what it intended to prove by such allegation, and an opportunity ro respond thereto. Appellant having failed to satisfy this mandatory requirement of our law on pleadings, this Court is of the opinion that the judge of the National Labour Court committed no reversible error when he refused to pass upon counts 1 and 2 of petitioner/appellant's petition. Hence, count 2 of the bill of exceptions, being vague and indistinct, it is hereby overruled.

Count 3 of the bill of exceptions reads: "3. and also because in your ruling of August 15, 1986, you ruled that petitioner was wrong for not dismissing the Supervisor and assistant supervisor under whom corespondent Beatrice Duopu worked since both the supervisor and assistant supervisor counter-checked the bill. Your Honour erroneously reached this conclusion because it was never raised by co-respondent Beatrice Duopu. The actual fact is and the contention of the petitioner is that co-respondent Duopu failed, neglected and refused to show the bill in question to her supervisor for checking and approval because she under-billed the consignee for reasons known to her. This salient issue of fact, even though clearly visible on records, Your Honour failed to pass upon same."

The contention of the appellant is that the judge committed a reversible error when

he concluded that the management should have dismissed the supervisor and assistant supervisor who counter-checked the bills computed by appellee, Beatrice Duopu. According to the appellant, this issue was never raised by appellee, Beatrice Duopu, as she failed, neglected and refused to show the bill in question to her supervisor for checking and approval.

Regarding the appellant's contention that the co-appellee failed, neglected and refused to show the bill to her supervisor after computing same, this Court is of the opinion that this contention is not supported by the records. The records do not reveal that at any time during the hearing did the appellant ever produce any evidence to show that appellee refused to show the bill for checking. Rather, the evidence of the co-appellee show that she spread on the minutes of the hearing conducted by the hearing officer that prior to the incident, she showed her supervisor whatever bill or bills that were computed by her for inspection and approval before they were sent out for payment. It was further pointed out by the co-appellee, without any rebuttal from the appellant, that when the particular bills in question were computed by co-appellee, the supervisor of the section in which the appellee worked had gone on his annual leave. Consequently, and because there were many customers, coupled with the heavy workload at the time, the bills were not counter-checked, but rather were sent directly to the cashier for payment. Hence, the issue of refusal, as contended by appellant, is not within the *res gestae* of this case.

With respect to appellant's contention that the trial judge's conclusion that management should have dismissed the supervisor and assistant supervisor under whom appellee Beatrice Duopu worked, and that this issue was never raised by the appellee, we hereunder quote the relevant portion of the judge's ruling:

"It is also observed from the records that during the period under review, that is, during the time complainant Beatrice Duopu under-charged the consignee as alleged by management, they were three in the office, including the supervisor, assistant supervisor, and the complainant herself, and that when the complainant billed the consignee, the supervisor or assistant would counter-check. In the mind of this court, if at all there was a loss sustained by management which of course according to record, the supervisor or assistant supervisor, together with the complainant should have suffered the consequence, that is, the dismissal, and not the complainant alone, as elected by management."

"A group or groups of employees shall be dismissed only for an act committed by such group or groups. It shall be unlawful to dismiss a group or groups of employees

for an act the commission of which cannot be attributed to a definite individual." Labor Practices Law, Lib. Code 18:71, under the caption *"Unlawful To Dismiss A group For Act of Individual"*.

According to the records certified to this Court, there is no evidence that either the supervisor or the assistant supervisor of the billing section of the appellant company was directly or indirectly responsible for the underbilling of appellant's consignee, or for the miscalculation of the storage charge computed by the co-appellee. Under these circumstances, the management could not have legally held the supervisor and assistant supervisor liable for the act of appellee, Beatrice Duopu, in the absence of any showing that they aided and abetted the commission of the act.

Count 4 of the bill of exceptions reads as follows: "4. And also because Your Honour committed a reversible error when you ruled that petitioner did not incur losses by the act of co-respondent Duopu in under-billing the consignee. Petitioner contended on record that the consignee was under-billed and petitioner only discovered this gross negligent act of co-respondent Duopu during the internal audit by petitioner's agent of the records of the billing section. By then petitioner had suffered monetary losses which were due to the gross negligent act of corespondent Duopu. Your Honour's ruling is therefore erroneous on this point."

Taking recourse to the records, we find that the following questions were put to appellant's principal witness while on cross-examination:

"Q. Mr. Witness, is it true that consignees who were incorrectly billed were rebilled after it had been discovered that the consignees had been incorrectly billed and that the consignees paid the correct amount to management?"

"A. Yes, it is true that after management unearthed a malpractice, we were instructed to back-bill them." *See* minutes of February 14, 1986.

"Q. As an internal auditor, is it not the fact that after the completion of your exercise, you were to make sure that those consignees who were affected would pay the correct amount to management?"

"A. It is true that some of these customers who were affected are making payments to the Authority."

The issue now presented is whether the appellant suffered any monetary loss due to

the negligence of appellee. "Loss" is defined as "an act of losing or the thing lost. A decrease in value or resources or increase in liabilities. That which is gone and cannot be recovered, or that which is withheld, or that of which a party is dispossessed, or an unintentional parting with something of value. A state of fact of being lost or destroyed." BLACK'S LAW DICTIONARY 1094-1095.

Given the answers to the questions posed to the appellant's witness, coupled with the definition of the word "loss", this Court is of the opinion that management did not sustain any loss to warrant the dismissal of the appellee, since according to appellant's own witness, whatsoever was lost as a result of the miscalculation by appellee of appellant's consignees storage charges was recovered by the management from the consignees who, during the exercise, were shown to have been affected by the under-billing. Count four of the bill of exceptions is therefore not sustained.

In view of what we have narrated and the circumstances of the case, coupled with the laws cited, we are of the considered opinion that the judgment of the National Labour Court should be, and the same is hereby affirmed, with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.